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AUTHOR	Berkobien, Richard
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ABSTRACT

This fact sheet offers, in a question-and-answer format, information on employment and the Americans with Disabilities Act of 1990 (ADA). It addresses the following topics: what Title I of the ADA says about employment, what employment discrimination means, which employers are affected, hiring quotas, determination of an individual's job qualifications, "reasonable accommodation," "undue hardship," and regulation and enforcement of Title I. Two government agencies are listed as sources of further information on the ADA. (JDD)

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THE AMERICANS WITH DISABILITIES ACT OF 1990 AND EMPLOYMENT

By Richard Berkobien

What is the Americans with Disabilities Act (ADA)?

Signed into law July 26, 1990, the ADA is a federal mandate which prohibits discrimination on the basis of disability in the areas of employment, public accommodation, transportation and telecommunications services. The first section of this law, Title I, refers to employment discrimination.

Much of what the ADA legislates concerning disability and non-discriminatory practices is identical to Section 504 of the Rehabilitation Act of 1973. Under this law, a person is disabled if that person has a physical or mental impairment that substantially limits one or more of the person's major life activities. However, this law also includes those who have a record of such impairment or are regarded as having such an impairment. The Rehabilitation Act of 1973 prohibits federal and certain federally-funded agencies from discriminating against those with disabilities. The ADA extends this prohibition to certain businesses regardless of receiving federal funds.

What does Title I of the ADA say about employment?

Title I states that employment practices cannot discriminate against a *qualified individual with a disability*. A person with a disability who is able to fulfill the *essential functions* of a job is considered qualified. The law also requires the employer to provide *reasonable accommodations* to assist in that person's employment. The law affects all areas of employment, including the job application process, hiring, compensation, advancements, organized labor relations, training and terminating employment.[1]

What does employment discrimination mean under the ADA?

The ADA addresses at least seven different areas of possible employment-related discrimination:

1. Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects that person's opportunities or status;
2. Participating in a contractual or other arrangement or relationship that subjects a covered employee to discrimination prohibited by the act;
3. Utilizing standards, criteria or methods of administration that have the effect of discrimination or perpetuate the discrimination;
4. Denying equal jobs or benefits to a qualified individual because that individual associates with someone who has a known disability;
5. Not making reasonable accommodations to the known limitations of an otherwise qualified individual unless the accommodation would impose an undue hardship on the operation of the business;
6. Using selection criteria that screen out an individual with a disability or a class of individuals with disabilities unless the criteria are job-related and are consistent with business necessity; and
7. Failing to select and administer employment tests in the most effective manner to ensure that results accurately reflect whatever factor the test purports to measure rather than reflecting a person's disability.[2]

Which employers does the ADA affect?

Full enactment of the law will be phased in over the four years from the date it was signed. By July 26, 1992, businesses with 25 employees or more will have to adhere to the law. By July 26, 1994, businesses with 15-24 employees will have to be in compliance. Employers are defined as entities engaged in industry and who employ individuals for each working day in 20 or more calendar weeks during the current or preceding calendar year. Businesses with fewer than 15 employees are exempt from the law as are certain private membership clubs that are exempt from taxation under Section 501(c) of the Internal Revenue Code of 1986.

Will the ADA require employers to hire a quota of individuals with disabilities?

No. ADA does not mandate affirmative action. It simply prohibits discriminating against employing a *qualified* individual with a disability based on the disability and/or the employer's willingness to reasonably accommodate the person's disability.

How will it be determined if the individual is qualified?

The law allows the employer to continue to judge whether or not an applicant is qualified. However, employers will need some evidence of what they consider necessary qualifications. This usually takes the form of a job description. These and other documents about qualifications will need to be as specific as possible about the essential requirements of each job. Employers will have to try to avoid listing unnecessary responsibilities and skills for a job, making general statements about responsibilities or listing requirements not normally performed in a particular job.

Some employers can stipulate certain requirements of a job other than the ability to perform the essential job functions. For example, a religion-related business can require that a job candidate or employee be a member of

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that particular religion as part of the job requirement.

An employer does not have to employ and has the right to fire a person who poses a direct threat to the health or safety of other individuals in the workplace. The ADA also protects the person with a disability who is a recovering alcoholic, but does not protect the person who is actively involved in substance abuse.

What is *reasonable accommodation*?

Employers will need to consider reasonable accommodation on an individual basis. Many people with mental retardation need little or no accommodation to the job, workplace or employment process. Others may need simple or more technical adaptations. As defined in the ADA, reasonable accommodation may include (1) making existing facilities readily accessible and usable and (2) job restructuring, modifying work schedules, reassigning someone to a vacant position, acquiring or modifying equipment or devices, appropriate adjustment or modification of examinations, training materials or policies and the provision of qualified readers or interpreters.

Some employers may fear that all people with disabilities will need accommodations and that these will be costly. However, a study revealed that 78 percent of people with disabilities who were working did not need accommodations. Another survey indicated that 69 percent of the accommodations needed cost less than $500 and that 50 percent cost less than $50.[3] Changes in how tasks are performed, flexibility in the work day, the use of jigs to help manipulate tasks, installing ramps, using color codes instead of numbers or words and other simple and low-cost methods can be used as accommodations.

Congress has enacted an ADA tax credit to assist small businesses in meeting the requirements of this law. The eligible small businesses are those with annual gross receipts of under 1 million dollars who employ 30 or fewer full-time employees. An annual credit of up to $5,000 is available. State vocational rehabilitation services and other government programs may also be able to provide monetary or other help to people who are disabled and need adaptive equipment or other help.

The ADA tax credit and these other sources may very well reduce any undue hardship on the employer by helping to pay for many reasonable accommodations. For more information on some of these sources, read the *arcfacts* on *Employment Types, Services and Incentives* and the *arcfacts* on *Plans for Achieving Self-Support* available from the ARC National Headquarters.

What would constitute an *undue hardship*?

The ADA does state that employers do not have to make accommodations when they constitute an undue hardship for a business. Undue hardship is defined as *an action requiring significant difficulty or expense.* Like reasonable accommodation, determining undue hardship must be done on an individual basis. There are several areas to consider:

1. The overall size of the business with respect to the number of employees, number and type of facilities and the size of the budget;
2. The type of operation maintained by the business, including the structure of the workforce; and
3. The nature and cost of the accommodation.[1]

How will Title I of the ADA be regulated and enforced?

The Equal Employment Opportunity Commission (EEOC) will handle regulation and enforcement of Title I. EEOC has stated that a proposed rule-making on Title I will be published by February 26, 1991. This will provide specific information regarding enactment of the law. EEOC has also stated that a technical assistance manual will be published by January 1992. This manual will be a comprehensive list of resources for employers and employees to use for help in understanding and complying with Title I. Those wishing additional information on enforcement should contact EEOC.

For more information on the ADA, or referral to a community resource, contact your local ARC chapter or the National Employment and Training Program located at the ARC National Headquarters. The following agencies also provide information on the ADA:

Equal Employment Opportunity Commission
1801 L Street, NW
Washington, D.C. 20507

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

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